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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
WILLIAM R. SCULLY, )  
d.b.a. BILL SCULLY )  
CONSTRUCTION COMPANY, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 744

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged population verification payment violation of respondent's Regulation I, came as a formal hearing before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) in the Seattle facility of the State Board of Industrial Insurance Appeals on February 19, 1975.

Appellant appeared pro se; respondent through Keith D. McGoffin. Diane Attleson, Olympia court reporter, recorded the proceedings.

1       Witness were sworn and testified. Exhibits were admitted. Closing  
2 arguments were made.

3       From testimony heard, exhibits examined and arguments considered,  
4 the Pollution Control Hearings Board makes these

5                               FINDINGS OF FACT

6                               I.

7       Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
8 Ex. Sess., has filed with this Board a certified copy of its Regulation  
9 I containing respondent's regulations and amendments thereto.

10                              II.

11       Section 9.02A of respondent's Regulation I requires the payment of  
12 a \$15.00 fee for a population density verification as specified in the  
13 land clearing burning regulation in Section 9.02(d)(2)(iii). Section  
14 3.29 authorizes a civil penalty of not more than \$250.00 for each  
15 violation of Regulation I.

16                              III.

17       Desiring to do some outdoor burning in connection with land clearing  
18 of a lot at 19914 60th N.E., an urbanized area in King County, appellant  
19 telephoned respondent and was informed he could obtain a "permit" by  
20 paying a \$15.00 fee. On October 7, 1974, appellant went to respondent's  
21 office, was informed a population density verification survey was  
22 necessary before a permit could be issued, applied for such a survey and  
23 paid, by check, a \$15.00 fee which respondent understood was for the  
24 "permit." Appellant was given a copy of the survey application which  
25 contained no information relative to a fee for the survey.

26       A day or so later, appellant was informed by respondent the survey

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1 showed a population density which prevented authorization of the fire.  
2 Appellant requested the return of his \$15.00 but was informed that "we  
3 don't give checks back."

4 Appellant then ordered his bank to stop payment on the \$15.00 check.

5 IV.

6 Respondent contends that appellant was informed that the \$15.00  
7 fee was for the population verification survey as required in Section  
8 9.02A of respondent's Regulation I. Respondent contends that the original  
9 of the population verification survey application, which appellant signed,  
10 bore this red-stamp legend: "A fee of \$15.00 must be included with the  
11 request for verification of population 6-20-74."

12 V.

13 After appellant's \$15.00 check was returned by the bank to  
14 respondent stamped "payment stopped," respondent served on appellant  
15 Notice of Civil Penalty No. 1792 in the sum of \$250.00, which is the  
16 subject of this appeal.

17 VI.

18 Any Conclusion of Law hereinafter stated which is deemed to be  
19 a Finding of Fact is adopted herewith as same.

20 From these Findings, the Pollution Control Hearings Board comes  
21 to these

22 CONCLUSIONS OF LAW

23 I.

24 Appellant was in violation of Section 9.02A of respondent's  
25 Regulation I as cited in Notice of Violation No. 9567.

26 FINAL FINDINGS OF FACT,  
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II.

Notice of Civil Penalty No. 1792 is unreasonable. We believe appellant was at all times under the impression that his \$15.00 check was for a "permit." We do not think respondent made it clear that the check was for the population verification survey. Levying the maximum civil penalty under those circumstances is not warranted. Appellant, however, should pay respondent the \$15.00 fee and, in our opinion, should also pay a penalty for his precipitous action in stopping payment on the check.

III.

Any Finding of Fact herein stated which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied, and appellant must pay respondent \$65.00, the balance of \$185.00 to be suspended pending no similar violations for a period six months from the date this Order becomes final.

DONE at Lacey, Washington this 25<sup>th</sup> day of February, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

Walt Woodward  
WALT WOODWARD, Member

FINAL FINDINGS OF FACT,  
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